

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
	:	
of	:	
	:	
CHAMSPET FINANCIAL SERVICES CORP.	:	DETERMINATION
	:	DTA NO. 818435
for Redetermination of Deficiencies or for Refund of New	:	
York State Corporation Franchise Tax under Article 9-A	:	
of the Tax Law for the Years 1999 and 2000.	:	

Petitioner, Chamspet Financial Services Corporation, c/o Chamberlain S. Peterside, 8835 23rd Avenue, Apt. C6, Brooklyn, New York 11214, filed a petition for redetermination of deficiencies or for refund of New York State corporation franchise tax under Article 9-A of the Tax Law for the years 1999 and 2000.

A small claims hearing was held before James Hoefer, Presiding Officer, at the offices of the Division of Tax Appeals, 5 Penn Plaza, New York, New York on February 5, 2002 at 2:45 P.M. Petitioner appeared by its president, Chamberlain S. Peterside. The Division of Taxation appeared by Barbara G. Billet, Esq. (Karen McWilliams).

Since neither party herein elected to reserve time to file a post-hearing brief, the three-month period for the issuance of this determination began as of the date the hearing was held.

ISSUE

Whether the Division of Taxation properly determined that petitioner was liable for the fixed dollar minimum tax due of \$800.00 per year as computed pursuant to Tax Law § 210(1)(d)(1)(F).

FINDINGS OF FACT

1. Petitioner herein, Chamspet Financial Services Corporation, was incorporated in New York and was registered with the Secretary of State for the years 1999 and 2000. The record herein contains contradictory evidence as to the exact date that petitioner was incorporated. The returns filed by petitioner indicate that it incorporated on January 6, 1999, while information obtained by the Division of Taxation ("Division") from the Secretary of State reflect a February 19, 1999 date of incorporation. For purposes of this determination the February 19, 1999 date will be used as the date of incorporation. Petitioner was officially dissolved on June 12, 2001.

2. On February 9, 2001, petitioner filed with the Division a General Business Corporation Franchise Tax Return Short Form for each of the years 1999 and 2000. Both returns were only partially completed, containing entries indicating its name and address; that it did not do business in the Metropolitan Commuter Transportation District; that no payment was being enclosed with the return and that it had no Federal taxable income in either year.

3. On March 19, 2001, the Division issued a separate Notice and Demand for Payment of Tax Due to petitioner for each of the years 1999 and 2000 asserting that it was liable for the fixed dollar minimum tax due of \$800.00 per year since its gross payroll, total receipts and average value of assets were each \$1,000.00 or less. The notice for the 2000 tax year assessed a tax due of \$800.00 and did not assert that any interest or penalty were due. The notice for 1999 also assessed a tax due of \$800.00; however, in addition to the tax due it asserted that interest of \$75.81 and penalty of \$200.00 were due. Penalty was assessed for 1999 since petitioner's return for said year was filed beyond the March 15, 2000 prescribed due date.

4. Petitioner was formed by Chamberlain S. Peterside in early 1999 with the intent that, as its name suggests, it would be conducting business as a financial services corporation. However,

Mr. Peterside, soon after petitioner was formed, became affiliated with Metlife Financial Services as a sales representative and, as such, he was required to conduct all business activities through said company. Accordingly, petitioner never actually conducted any business activities in New York, or elsewhere for that matter, during its entire existence and, as noted earlier, it was eventually dissolved on June 12, 2001.

SUMMARY OF PETITIONER'S POSITION

5. At the hearing held herein, petitioner asserted that it was eligible and had elected to be treated as an S corporation for Federal tax purposes and that it should also be treated as an S corporation for New York State tax purposes. No documentary or other credible evidence was adduced to establish that petitioner had elected and was approved to be treated as an S corporation for Federal tax purposes. Furthermore, when questioned whether petitioner had timely filed an election with the Division to be treated as an S corporation for New York State tax purposes, Mr. Peterside could not recall whether or not such an election had been filed. The Division has no record indicating that petitioner ever filed an election to be treated as an S corporation.

6. Petitioner also maintains that it is unfair and inequitable to be held liable for the fixed dollar minimum tax due of \$800.00 per year given the fact that it conducted absolutely no business activities whatsoever from the date it was incorporated to the date it was dissolved.

CONCLUSIONS OF LAW

A. In the instant matter, it is undisputed that petitioner conducted no business activities during either of the two years at issue, thus generating no Federal taxable income or entire net income base. Accordingly, any corporation franchise tax due for the two years in dispute would be computed at the fixed dollar minimum rates as set forth in the statute. If petitioner is found to

be a C corporation for 1999 and 2000, Tax Law § 210(1)(d)(1)(F) would impose a fixed dollar minimum tax due of \$800.00 per year. If it is determined that petitioner has properly and timely elected to be taxed as an S corporation for New York State tax purposes, then the fixed dollar minimum tax due is \$100.00 per year pursuant to Tax Law § 210(1)(g)(1).

B. To be accorded status as an S corporation petitioner was required to file Form CT-6, Election by a Federal S Corporation to be Treated as a New York S Corporation, on or before May 4, 1999 for the 1999 tax year or by March 15, 2000 for the 2000 tax year. Tax Law § 1089(e) places the burden of proof on petitioner to show wherein a deficiency is erroneous. Although petitioner has alleged that it should be taxed as an S corporation for 1999 and 2000, no credible evidence has been submitted to support this allegation and petitioner has therefore failed to meet its burden of proof. Accordingly, the Division has properly determined that petitioner is not an S corporation and is subject to the fixed dollar minimum tax due of \$800.00 per year as assessed pursuant to Tax Law § 210(1)(d)(1)(F).

C. Petitioner also asserts that it is unfair and inequitable to be held liable for the fixed dollar minimum tax due of \$800.00 per year since it conducted no business activities from the date it was incorporated to the date it was dissolved. As relevant to the facts present in this dispute, Tax Law § 210(1) specifically provides that the tax due is the *higher* of the tax computed using the entire net income base (Tax Law § 210[1][a]), in this case zero, or the fixed dollar minimum tax of \$800.00 per year. The tax is imposed on petitioner for the privilege of exercising its franchise in New York and it is irrelevant that petitioner chose not to actively exercise said privilege.

D. The petition of Chamspet Financial Services Corporation is denied and the Division's two notices and demands for payment of tax due, each dated March 19, 2001, are hereby sustained.

DATED: Troy, New York
April 18, 2002

/s/ James Hoefer
PRESIDING OFFICER